

916) 445-8485

November 22, 1978

Dear Mr. :

This is in response to your November 3, 1978, letter concerning Reservation Ranch and its purchases of Hoopa Indian Reservation timber/logs.

With respect to transactions between the Hoopa Valley Tribe and Reservation Ranch and your opposition to imposition of the timber yield tax with respect to such transactions upon constitutional grounds, as a result of Proposition 5 on the June 6, 1978, Statewide Ballot/Article III, Section 3.5 of the California Constitution, an administrative agency has no power:

(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;

(b) To declare a statute unconstitutional;

(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

Accordingly, if Reservation Ranch wishes to pursue the taxability of these transactions, it will have to report and pay the appropriate taxes and/or taxes as determined, as the case or cases may be; file claims for refund; and upon the denial of the claims for refund, file refund actions.

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With respect to transactions whereby Reservation Ranch has acquired from private persons logs which were once standing timber on the Hoopa Valley Reservation, said private persons, presumably, having acquired the timber from the Hoopa Valley Tribe, assuming that such private persons are, as is the Tribe, exempt from state taxation, it is our position that Reservation Ranch is a timber owner of felled or downed timber who has acquired title to such timber from an exempt person or agency and hence, is liable for the timber yield tax. As you are aware, we have interpreted "first person who acquires either the legal title or beneficial title to timber after it has been felled from land owned by a federal agency or any other person or agency or entity exempt from state taxation" (§ 38104) to mean the first non-exempt person who acquires such title from an exempt person or agency. Were it otherwise, no timber yield tax would ever be received from such felled or downed timber: transactions would be structured so that the first person acquiring title from an exempt person or agency would always be another exempt person or agency.

Additionally, "timber" means trees of any species maintained for eventual harvest for forest product purposes, whether planted or of natural growth, standing or down (§ 38103). In our view, felled or downed trees encompasses timber which is no longer standing and which has been limbed and bucked (logs), not just severed timber, and the timber yield tax is applicable. Were it otherwise, no timber yield tax would ever be received from timber owners of felled or downed timber who acquired title to such felled or downed timber from exempt persons or agencies: transactions would be structured so that all severed timber would be limbed and bucked before transfer of title.

Finally in this regard, if Reservation Ranch has acquired from private person's logs, which were once standing timber on the Hoopa Valley Reservation, and if such private persons are not exempt from state taxation, such persons would be the timber owners liable for the timber yield tax.

In conclusion, you requested that we keep you informed as to the progress of any tax collection activation pertaining to Reservation Ranch. By copy of this letter, we are requesting our Timber Tax Division to forward copies of any letters, determinations, or other collection-related documents, which may be forthcoming to you.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr

bc Mr. Walter R. Senini
Mr. Paul Crebbin
Mr. L. H. Lehn

Please implement last paragraph, as necessary.